

Mortgage Loan Disclosure Statements To Be Translated

California Civil Code Section 1632 currently requires that any person engaged in a business who negotiates primarily in the Spanish language, either orally or in writing, deliver to the other party a Spanish-language translation of the contract or agreement, *before it is executed*. The translation must include every term and condition in the contract or agreement.

To assist DRE-licensed brokers who negotiate loans primarily in Spanish, and where the loan is primarily for personal, family or household purposes, a Spanish translation of the Mortgage Loan Disclosure Statement/Good Faith Estimate (RE883A) required by Business and Professions Code Section 10240 is available on the DRE Web site www.dre.ca.gov. Delivery of the DRE translated disclosure statement will comply with the provisions of Civil Code Section 1632.

Effective July 1, 2004 (pursuant to AB309, Chapter 330), Civil Code Section 1632 will additionally require persons who negotiate primarily in Chinese, Tagalog, Vietnamese or Korean, either orally or in writing, deliver to the other party a translation of the contract or agreement in the language used for negotiations. The translation must include translation of every term and condition of the contract or agreement. In order to comply with the disclosure form provisions, DRE-licensed brokers who negotiate loans primarily in these languages must, effective July 1, 2004, provide the Mortgage Loan Disclosure Statement or Mortgage Loan

Disclosure Statement/Good Faith Estimate in the appropriate language. The Department is in the process of developing these two forms translated into the above languages and expects to have them available to the industry in both hard copy and on the DRE Web site www.dre.ca.gov on or about June 1, 2004.

Affected brokers should fully review the provisions of Civil Code Section

1632 in order to ensure their compliance. Both versions of Section 1632, the one now in effect, and the one effective July 1, 2004, can be viewed at www.dre.ca.gov. Click on 2004 Real Estate Law, then Pertinent Excerpts from the California Codes, then Civil Code Excerpts.

Questions regarding this and other mortgage loan related issues can be answered by calling (916) 227-0770.



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MORTGAGE LOAN BULLETIN

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DRE's Internet address is:
<http://www.dre.ca.gov>



CalHFA Offers More Than Just First-Time Homebuyer Loans



Since 1988, the California Housing Finance Agency's (CalHFA) Mortgage Insurance Services Division, formerly known as CaHLIF, has been providing high coverage, low cost mortgage insurance to home buying families throughout California. The importance of CalHFA's Mortgage Insurance Services Division is to partner with lenders and financial investors who would otherwise consider some affordable housing program loans too much of an investment risk. Without

CalHFA's mortgage insurance coverage, many affordable loans for low to moderate income and hard to qualify borrowers may not be made.

Today, CalHFA Mortgage Insurance programs are available through lenders, state and local government agencies and nonprofit affordable housing finance providers. Examples of CalHFA's strategic partnerships include:

- Jumbo Loan Product Partnership with Countrywide Home Loans and National Homebuyers Fund – A new jumbo loan product to assist the workforce in high cost counties to attain homeownership.
- Economic Opportunity Mortgage Program (EOM) – A partnership between CalHFA and Union Bank of California providing up to 100% financing for low income borrowers.

Summaries of all CalHFA Mortgage Insurance Division insured programs can be obtained at www.calhfa.ca.gov/insurance/programs or by calling (916) 322-8936.

CalHFA, the State's affordable housing bank, was chartered in 1975 to meet the housing needs of low and moderate income Californians and has helped more than 155,000 families purchase their first home. A complete list of CalHFA homeownership programs is available through CalHFA's web site at www.calhfa.ca.gov.

REMINDER: Mortgage Loan Bulletin only published on the DRE Web Site

To increase operating efficiencies and take advantage of today's technology, the *Mortgage Loan Bulletin* is no longer distributed by U.S. mail. The Department of Real Estate (DRE) will continue to publish the *Mortgage Loan Bulletin* in April and October of each year, however, issues will be available only on the DRE Web site www.dre.ca.gov under **Publications, Mortgage Loan Bulletin**. Thank you for your understanding and please continue to read the *Mortgage Loan Bulletin*.

MULTI-LENDER LAW AMENDED

Two bills amending statutes dealing with multi-lender (fractionalized) loans became law effective January 1, 2004. Generally, these are notes that are either arranged or sold by brokers primarily to two or more private individual investors where the notes are a series secured directly by the same real property, or the sale of undivided interests in a note secured directly by real property equivalent to a series transaction.

The changes in the law pursuant to AB620 (Leno) and AB679 (Chavez) repealed Business and Professions Code Section 10229 which resided in Article 4 (Fees) of the Real Estate Law and added Sections 10237 through 10239.4 as Article 6 of the Real Estate Law now known as Claim of Exemption from Securities Qualification. This change effected two major amendments to the law. The first allows a multi-lender loan to be secured by more than one parcel of real property. To do so, the broker must, in addition to the required disclosure of the material facts concerning the transaction, provide the following:

- The address, description, and estimated market value of each property securing the loan,
- The amount of the available equity in each property securing the loan after the loan amount to be apportioned to each property is assigned, and
- The loan to value percentage of each property after the loan amount to be apportioned is assigned.

In response to this change, the lender/purchaser disclosure statements, RE851A and RE851B were amended, and a new Multi-property (Cross Collateralization) Addendum (RE851D) has been created, to accommodate these transactions and are available at www.dre.ca.gov.

The second major amendment concerns multi-lender “construction” or “rehabilitation” loans. It changes the term “current market value” to mean the value of the *completed project* if the following investor safeguards are met:

- An independent neutral third-party escrowholder is used for all deposits and disbursements,
- The loan is fully funded, with the entire loan amount to be deposited in escrow prior to recording the deed of trust,
- A comprehensive, detailed draw schedule is used to ensure proper and timely disbursements to allow for completion of the project,
- The disbursement draws from the escrow account are based on verification from an independent qualified person who certifies that the work completed to date meets the related codes and standards and that the draws were made in accordance with the construction contract and draw schedule. (Note – “Independent qualified person” is very narrowly defined in the statute),
- An appraisal is completed by a qualified and licensed appraiser in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP),
- In addition to the transaction documentation required by subdivision (i) of Section 10238 of the Code, the documentation shall include a detailed description of actions that may be taken in the event of a failure to complete the project, whether that failure is due to default, insufficiency of funds, or other causes, and
- The entire amount of the loan does not exceed \$2,500,000.

Another amendment to the law requires a broker who arranges a transaction pursuant to Article 6, or pursuant to an offering subject to the Corporation Code, to also clearly indicate in the transaction file the provision of the Corporate Securities Law of 1968 pertaining to qualification, or exemption from qualification, under which the transaction is conducted. The broker must retain the information in the transaction file for a period of 3 years.

Brokers who contemplate arranging or making any multi-lender (fractionalized) loan are highly encouraged to become familiar with Article 6 in its entirety as non-compliance may expose the broker to discipline by both the Department of Real Estate and the Department of Corporations which enforces the State’s securities laws. Note – the two different bills (AB620 and AB679) both added an Article 6 with the same section numbers, however, only the version added by AB679 included all of the amendments. To avoid confusion when reviewing Article 6 in the 2004 Real Estate Law on the DRE Web site, review the version added by Stats. 2003, c901, (AB679). Legislation has been introduced (Assembly Bill 2069 Chavez) to repeal Article 6 as added by AB620, Chapter 902.

For questions regarding this and other mortgage loan related issues, call the Mortgage Loan Activities Unit at (916) 227-0770. 📞